

RECEIVED

DOCKET FILE COPY ORIGINAL

MAR 25 1994

ATLANTA, GEORGIA
BRUSSELS, BELGIUM
FAIRFAX, VIRGINIA
KNOXVILLE, TENNESSEE
NEW YORK, NEW YORK

HUNTON & WILLIAMS

2000 PENNSYLVANIA AVENUE, N.W.
SUITE 9000
WASHINGTON, D.C. 20008
TELEPHONE (202) 955-1500
FAX (202) 778-2201

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
NORFOLK, VIRGINIA
RALEIGH, NORTH CAROLINA
RICHMOND, VIRGINIA
WARSAW, POLAND

March 25, 1994

By Hand

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

94-11

Telephone and Data Systems, Inc.
File No. 10209-CL-P-715-B-88

Dear Mr. Caton:

Enclosed for filing are an original and six (6) copies of the Reply of Portland Cellular Partnership to TDS/USCC Opposition to Petition to Intervene in the above-captioned proceeding.

The three microfiche copies of this Petition required by 47 C.F.R. § 22.6(d) (1992) will be filed with the Commission as soon as they are available, which is expected to be within the next two days. If an extension or waiver of Commission rules is required to file the microfiche copies subsequent to the filing of the enclosed hard copies, we hereby request such extension or waiver.

Copies of the enclosed Petition to Intervene have been served on each of the parties designated on the attached Certificate of Service.

Thank you for your assistance in this matter.

Very truly yours,

Michael B. Barr /wlc

Michael B. Barr

No. of Copies rec'd
List ABCDE

046

RECEIVED

MAR 25 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of:)	CC Docket No. 94-11
)	
TELEPHONE AND DATA)	File No. 10209-CL-P-715-B-88
SYSTEMS, INC.)	
)	
For Facilities in the)	
Domestic Public Cellular)	
Telecommunications Radio)	
Service on Frequency)	
Block B, in Market 715,)	
Wisconsin 8 (Vernon),)	
Rural Service Area)	

To: The Presiding Administrative Law Judge

REPLY OF PORTLAND CELLULAR PARTNERSHIP
TO TDS/USCC OPPOSITION
TO PETITION TO INTERVENE

Portland Cellular Partnership ("Port Cell"), by its attorneys, hereby replies to the Opposition of Telephone and Data Systems, Inc. ("TDS") and United States Cellular Corporation ("USCC") to Port Cell's Petition to Intervene in the above captioned proceeding.

1. In its Petition to Intervene, Port Cell noted that it had raised the La Star Cellular Telephone Company^{1/} footnote three character question at issue in this proceeding in the Northeast Cellular Telephone Company, L.P. proceeding. The Common Carrier Bureau ("Bureau") in its March 17, 1994 comments in support of Port Cell's Petition to Intervene agreed that Port Cell has a petition pending before the Commission in the Northeast proceeding

^{1/} La Star Cellular Telephone Company, 6 FCC Rcd 6860 (I.D. 1991), aff'd, 7 FCC Rcd 3762 (1992), appeal pending sub nom. Telephone and Data Systems, Inc. v. FCC, Case Nos. 92-1291, 92-1294 (D.C. Cir.).

raising the footnote three character issue. Because paragraph 38 of the Hearing Designation Order ("HDO") in this proceeding states that any "other parties which have pending petitions alleging [the La Star] character issues may file a petition to intervene in this proceeding,"^{2/} the Bureau supported Port Cell's intervention.

2. TDS, in its opposition, raises a barrage of arguments concerning why Port Cell should not be permitted to intervene. But none of those arguments has any basis in the HDO or refutes the central fact that Port Cell has properly raised the La Star footnote three issue in the Northeast proceeding and thus fits precisely within the category of parties that the Commission indicated in the HDO should be allowed to intervene in this proceeding.

3. TDS's assertions that Port Cell "cannot benefit from the outcome here" is simply wishful thinking on its part. Port Cell has a petition for reconsideration pending in the Northeast proceeding in which it has asked the Commission to reconsider its initial finding that TDS is not in control of Northeast. A critical part of that initial finding was the Commission's acceptance of TDS's assertions that it was not in control of Northeast. A finding in this proceeding that TDS/USCC lacked candor in its dealings with the Commission will therefore most certainly be relevant to the Commission's reconsideration of its grant to Northeast, since it could well undermine the Commission's acceptance of TDS's assertions in that proceeding.

4. TDS/USCC also claims that Port Cell should not be allowed to intervene because there should be no "enlargement of issues" in this proceeding. But the question of the scope of this proceeding is not one that should be decided in the context of Port Cell's petition to

^{2/} See Telephone and Data Systems, Inc., FCC No. 94-29, at ¶ 38 (released Feb. 1, 1994).

intervene. Rather, the relevance of TDS/USCC's conduct in other proceedings should be determined only when, and if, a party in this proceeding attempts to proffer evidence of such conduct.

Conclusion

For the reasons stated above and in its March 8, 1994 Petition to Intervene, Port Cell respectfully requests that it be granted leave to intervene in this proceeding.

Respectfully submitted,

PORTLAND CELLULAR PARTNERSHIP

By: Michael B. Barr/cwc
Michael B. Barr
Hunton & Williams
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 955-1515

CERTIFICATE OF SERVICE

I, Constance Corry, do hereby certify that on March 25, 1994, copies of the foregoing Reply of Portland Cellular Partnership were served by first-class mail, except as otherwise noted, on the following parties:

Honorable Joseph Gonzalez*
Federal Communications Commission
2000 L Street, N.W.
Washington, D.C. 20554

A. Richard Metzger*
Joseph Paul Weber*
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Alan Y. Naftalin, Esq.
Herbert D. Miller, Jr., Esq.
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

R. Clark Wadlow, Esq.
Mark D. Schneider, Esq.
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

Kenneth E. Hardman, Esq.
Moir & Hardman
2000 L Street, N.W.
Suite 512
Washington, D.C. 20036

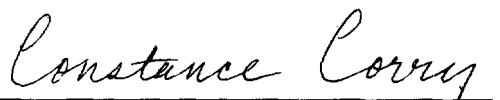
L. Andrew Tollin, Esq.
Luisa L. Lancetti, Esq.
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006-5289

Douglas B. McFadden, Esq.
Donald J. Evans, Esq.
McFadden, Evans & Sill
1627 Eye Street, N.W.
Suite 810
Washington, D.C. 20006

Howard J. Symons, Esq.
James A. Kirkland, Esq.
Mintz, Levin, Cohn, Ferris,
Glovsky & Popco
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004

Timothy E. Welch, Esq.
Hill & Welch
1330 New Hampshire Avenue, N.W.
Suite 113
Washington, D.C. 20036

*By Hand



Constance Corry